

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of

HAWAIIAN ELECTRIC COMPANY, INC.

For Approval of Rate Increases and Revised
Rate Schedules and Rules

DOCKET NO. 2008-0083

PUBLIC UTILITIES
COMMISSION

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FILED

MOTION FOR ENLARGMENT OF TIME TO FILE A MEMORANDUM
IN OPPOSITION TO THE MOTION TO INTERVENE AND BECOME A
PARTY OF WAL-MART STORES, INC. AND SAM'S WEST, INC.

DECLARATION OF PETER Y. KIKUTA

DECLARATION OF DEAN K. MATSUURA

DECLARATION OF KEVIN KATSURA

AND

CERTIFICATE OF SERVICE

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**BEFORE THE PUBLIC UTILITIES COMMISSION
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IN OPPOSITION TO THE MOTION TO INTERVENE AND BECOME A
PARTY OF WAL-MART STORES, INC. AND SAM'S WEST, INC.**

HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") respectfully requests that the time to file a memorandum in opposition to the second Motion to Intervene and Become a Party filed by Wal-Mart Stores, Inc. and Sam's West, Inc. ("Second Motion to Intervene") on September 2, 2008 be enlarged from September 11, 2008.¹

This Motion is filed pursuant to Section 6-61-23 of the Commission's Rules of Practice and Procedure, Title 6, Chapter 61 of the Hawaii Administrative Rules ("Commission's Rules of Practice and Procedure").

Wal-Mart's Second Motion to Intervene was filed on September 2, 2008. According to the Certificate of Service to Wal-Mart's Second Motion to Intervene, William A. Bonnet/Dean K. Matsuura of HECO were served the motion by United States mail on September 2, 2008.

¹ Wal-Mart Stores, Inc. and Sam's West, Inc. (collectively referred to as "Wal-Mart") filed their initial Motion to Intervene and Become a Party on August 20, 2008. HECO filed its memorandum in opposition to the motion on August 27, 2008. On September 2, 2008, Wal-Mart filed a Notice of Withdrawal Without Prejudice of Motion to Intervene and Become a Party, filed August 20, 2008 in which Wal-Mart withdrew without prejudice, the August 20, 2008 Wal-Mart motion to intervene ("Wal-Mart's Withdrawal of First Motion to Intervene").

Hawaii Administrative Rules ("HAR") § 6-61-41(c) states: "An opposing party may serve and file counter affidavits and a written statement of reasons in opposition to the motion and of the authorities relied upon not later than five days after being served the motion"

HAR § 6-61-22 states: ". . . When the prescribed time is less than seven days, Saturdays, Sundays, and holidays within the designated period shall be excluded in the computation"

HAR § 6-61-21(e) states "Whenever a party has the right to do some act or take some proceedings within a prescribed period after the service of a notice or other document upon the party and the notice or document is served upon the party by mail, two days shall be added to the prescribed period." Accordingly, a memorandum in opposition to Wal-Mart's Second Motion to Intervene should have been filed on or before September 11, 2008.

HAR § 6-61-23(a) states:

When by the chapter or by notice or order of the commission, any act is required or allowed to be done at or within a specified time, the commission for good cause shown may at any time, in its discretion:

* * *

(2) Upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action on jurisdictional matters and where any order expressly provides that no enlargement shall be granted.

HECO did not file a memorandum in opposition to Wal-Mart's Second Motion to Intervene on or before September 11, 2008 due to excusable neglect. Simply put, through no fault of HECO's, HECO did not receive a copy of (and was not aware that Wal-Mart had filed) Wal-Mart's Second Motion to Intervene until October 10, 2008 (well past the deadline to file a timely memorandum in opposition).

First, HECO did not receive a copy of Wal-Mart's Second Motion to Intervene until

October 10, 2008. HECO obtained a copy of Wal-Mart's Second Motion to Intervene from the Commission. See Declaration of Dean K. Matsuura. In addition, HECO did not receive a copy of Wal-Mart's Withdrawal of First Motion to Intervene until October 10, 2008. HECO obtained a copy of Wal-Mart's Withdrawal of First Motion to Intervene from the Commission. See Declaration of Kevin Katsura.²

Further, HECO first learned of the Second Motion to Intervene and Wal-Mart's Notice of Withdrawal of First Motion to Intervene on October 10, 2008.³ See Declaration of Dean K. Matsuura.

HECO's request for an enlargement of time to file a memorandum in opposition to Wal-Mart's Second Motion to Intervene should be granted. If HECO is not given an enlargement of time to respond to Wal-Mart's Second Motion to Intervene, then HECO would be penalized even though the failure to timely oppose the motion to intervene was not HECO's fault. This penalty would be especially unfair to HECO in light of the following facts:

(1) through no fault of its own, HECO did not receive a copy of the motion to intervene until October 10, 2008, (2) Wal-Mart's Second Motion to Intervene is a second motion to intervene in

² According to the Certificate of Service to the Second Wal-Mart Motion to Intervene, William A. Bonnet/Dean K. Matsuura were served with the Second Wal-Mart Motion to Intervene by United States mail on September 2, 2008. According to the Certificate of Service to the Wal-Mart Withdrawal of First Motion to Intervene, Kevin Katsura was served with the Wal-Mart Withdrawal of the First Motion to Intervene by United States mail on September 2, 2008. The Application in this Docket stated that copies of correspondence and communications regarding the application should be addressed to Thomas W. Williams, Jr./Peter Y. Kikuta/Damon L. Schmidt of Goodsill Anderson Quinn & Stifel ("GAQS"). The Certificates of Service to the Second Wal-Mart Motion to Intervene and Wal-Mart Withdrawal of First Motion to Intervene do not list GAQS as being served with these pleadings. GAQS did not receive a copy of the Second Wal-Mart Motion to Intervene or Wal-Mart Withdrawal of First Motion to Intervene until October 10, 2008. See Declaration of Peter Y. Kikuta.

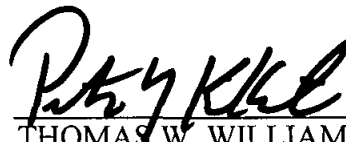
³ HECO filed a Memorandum in Opposition to the Motion to Intervene and Become a Party of the Hawaii Commercial Energy Customer Group ("HECO's Memorandum in Opposition") on October 7, 2008. HECO's October 7, 2008 memorandum in opposition referred to Wal-Mart's August 20, 2008 motion to intervene but did not mention Wal-Mart's Second Motion to Intervene or Wal-Mart's Withdrawal of First Motion to Intervene. HECO's Memorandum in Opposition at 3-4.

this Docket by the same parties, and (3) HECO had filed a memorandum in opposition to the first motion to intervene in this Docket by the same parties.

A hearing is not requested on this Motion.

HECO respectfully requests that the Commission grant this Motion, which requests an enlargement of time to file a memorandum in opposition to Wal-Mart's Second Motion to Intervene. If the Motion is granted, HECO will file a memorandum in opposition to Wal-Mart's Second Motion to Intervene no later than 5 business days after the order granting this Motion is served on HECO.

DATED: Honolulu, Hawaii, October 13, 2008.



THOMAS W. WILLIAMS, JR.

PETER Y. KIKUTA

DAMON L. SCHMIDT

Attorneys for
HAWAIIAN ELECTRIC COMPANY, INC

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DOCKET NO. 2008-0083

DECLARATION OF PETER Y. KIKUTA

1. I, Peter Y. Kikuta, am counsel of record herein for Hawaiian Electric Company, Inc. ("HECO"). I make this declaration based upon my own personal knowledge and upon information and belief gained in that capacity.

2. I am an attorney with the law firm of Goodsill Anderson Quinn & Stifel, a Limited Liability Law Partnership LLP ("Goodsill"), whose offices are located at Ali'i Place, Suite 1800, 1099 Alakea Street, Honolulu, Hawaii, 96813.

3. On October 10, 2008, Goodsill received a copy of the following pleadings from HECO: (a) Motion to Intervene and Become a Party filed by Wal-Mart Stores, Inc. and Sam's West, Inc. on September 2, 2008 and (b) Notice of Withdrawal Without Prejudice of Motion to Intervene and Become a Party filed by Wal-Mart Stores, Inc. and Sam's West, Inc. on September 2, 2008.

4. I first learned of the Second Motion to Intervene and Wal-Mart's Notice of Withdrawal of First Motion to Intervene on October 10, 2008.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawaii, October 13, 2008.



PETER Y. KIKUTA

**BEFORE THE PUBLIC UTILITIES COMMISSION
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DECLARATION OF DEAN K. MATSUURA

1. I, Dean K. Matsuura, am Manager, Regulatory Affairs for Hawaiian Electric Company, Inc. ("HECO"). I make this declaration based upon my own personal knowledge and upon information and belief gained in that capacity.

2. My business address is P.O. Box 2750, Honolulu, Hawaii, 96840-0001.

3. I talked to the assistant for William A. Bonnet who is responsible for receiving mail addressed to Mr. Bonnet. The assistant told me that she did not have a record of receiving the Motion to Intervene and Become a Party filed by Wal-Mart Stores, Inc. and Sam's West, Inc. ("Second Motion to Intervene") on September 2, 2008 or Notice of Withdrawal Without Prejudice of Motion to Intervene and Become a Party ("Wal-Mart's Withdrawal of First Motion to Intervene") filed by Wal-Mart Stores, Inc. and Sam's West, Inc. on September 2, 2008.

4. I did not receive the Second Motion to Intervene or Wal-Mart's Notice of Withdrawal of First Motion to Intervene before October 10, 2008.

3. On October 10, 2008, HECO obtained a copy of the Second Motion to Intervene and Wal-Mart's Withdrawal of First Motion to Intervene from the Commission.

4. I first learned of the Second Motion to Intervene and Wal-Mart's Notice of Withdrawal of First Motion to Intervene on October 10, 2008.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawaii, October 13, 2008.


DEAN K. MATSUURA

**BEFORE THE PUBLIC UTILITIES COMMISSION
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DECLARATION OF KEVIN KATSURA

1. I, Kevin Katsura, am an Associate General Counsel for Hawaiian Electric Company, Inc. ("HECO"). I make this declaration based upon my own personal knowledge and upon information and belief gained in that capacity.

2. My business address is P.O. Box 2750, Honolulu, Hawaii, 96840-0001.

3. I did not receive the Motion to Intervene and Become a Party filed by Wal-Mart Stores, Inc. and Sam's West, Inc. ("Second Motion to Intervene") on September 2, 2008 or Notice of Withdrawal Without Prejudice of Motion to Intervene and Become a Party ("Wal-Mart's Withdrawal of First Motion to Intervene") filed by Wal-Mart Stores, Inc. and Sam's West, Inc. on September 2, 2008 before October 10, 2008.

4. On October 10, 2008, HECO obtained a copy of the Second Motion to Intervene and Wal-Mart's Withdrawal of First Motion to Intervene from the Commission.

5. I first learned of the Second Motion to Intervene and Wal-Mart's Notice of Withdrawal of First Motion to Intervene on October 10, 2008.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawaii, October 13, 2008.



KEVIN KATSURA

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing MOTION FOR ENLARGEMENT OF TIME TO FILE A MEMORANDUM IN OPPOSITION TO THE MOTION TO INTERVENE AND BECOME A PARTY OF WAL-MART STORES, INC. AND SAM'S WEST, INC., DECLARATION OF PETER Y. KIKUTA, DECLARATION OF DEAN K. MATSUURA, AND DECLARATION OF KEVIN KATSURA, together with this Certificate of Service, by hand delivery and/or by mailing a copy by United States mail, postage prepaid, to the following:

Catherine Awakuni, Executive Director
Department of Commerce and Consumer Affairs
Division of Consumer Advocacy
335 Merchant Street, Room 326
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6212A Old Franconia Road
Alexandria, VA 22310

Counsel for Wal-Mart

Joseph A. Stewart
Kobayashi Sugita & Goda
999 Bishop Street, Suite 2600
Honolulu, HI 96813

Counsel for Wal-Mart

Courtesy copy to the following (even though they have withdrawn as Counsel for Wal-Mart Stores, Inc. and Sam's West, Inc. in this docket)

Bruce D. Voss
Lori N. Tanigawa
Bays Deaver Lung Rose & Holma
Alii Place, 16th Floor
1099 Alakea Street
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, October 13, 2008.



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